

HEALTH REFORM - ADMINISTRATIVE**SIMPLIFICATION**

2010 GENERAL SESSION

STATE OF UTAH

LONG TITLE**General Description:**

This bill amends provisions related to administrative simplification of the coordination of health insurance benefits as provided in divorce decrees, child support orders, and the Insurance Code.

Highlighted Provisions:

This bill:

- ▶ provides uniform language for divorce decrees and child support orders related to the coordination of health insurance benefits when a dependent child of the marriage is covered by both parents' health insurance policies;
- ▶ establishes a coordination of benefits process for health insurance claims based primarily on national standards;
- ▶ provides uniform educational material for the public regarding the coordination of health insurance benefits; and
- ▶ repeals the coordination of health insurance benefits process that was to take effect July 1, 2010.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

30-3-5, as last amended by Laws of Utah 2005, Chapter 129

31A-22-619, as last amended by Laws of Utah 2009, Chapter 11

63I-2-231, as last amended by Laws of Utah 2009, Chapter 11

62A-11-326, as last amended by Laws of Utah 2009, Chapter 142

32 **78B-12-212**, as last amended by Laws of Utah 2009, Chapter 142

33 ENACTS:

34 **30-3-5.5**, Utah Code Annotated 1953

35 REPEALS:

36 **31A-22-619.5 (Effective 07/01/10)**, as enacted by Laws of Utah 2009, Chapter 11

37

38 *Be it enacted by the Legislature of the state of Utah:*

39 Section 1. Section **30-3-5** is amended to read:

40 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
41 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and**
42 **parent-time -- Determination of alimony -- Nonmeritorious petition for modification.**

43 (1) When a decree of divorce is rendered, the court may include in it equitable orders
44 relating to the children, property, debts or obligations, and parties. The court shall include the
45 following in every decree of divorce:

46 (a) an order assigning responsibility for the payment of reasonable and necessary
47 medical and dental expenses of the dependent children including responsibility for health
48 insurance out-of-pocket expenses such as co-payments, co-insurance, and deductibles;

49 (b) (i) if coverage is or becomes available at a reasonable cost, an order requiring the
50 purchase and maintenance of appropriate health, hospital, and dental care insurance for the
51 dependent children; and

52 (ii) a designation of which health, hospital or dental insurance plan is primary and
53 which health, hospital, or dental insurance plan is secondary in accordance with the provisions
54 of Section 30-3-5.5 which will take effect if at any time a dependent child is covered by both
55 parents' health, hospital or dental insurance plans.

56 (c) pursuant to Section 15-4-6.5:

57 (i) an order specifying which party is responsible for the payment of joint debts,
58 obligations, or liabilities of the parties contracted or incurred during marriage;

59 (ii) an order requiring the parties to notify respective creditors or obligees, regarding
60 the court's division of debts, obligations, or liabilities and regarding the parties' separate,
61 current addresses; and

62 (iii) provisions for the enforcement of these orders; and

(d) provisions for income withholding in accordance with Title 62A, Chapter 11, Recovery Services.

(2) The court may include, in an order determining child support, an order assigning financial responsibility for all or a portion of child care expenses incurred on behalf of the dependent children, necessitated by the employment or training of the custodial parent. If the court determines that the circumstances are appropriate and that the dependent children would be adequately cared for, it may include an order allowing the noncustodial parent to provide child care for the dependent children, necessitated by the employment or training of the custodial parent.

(3) The court has continuing jurisdiction to make subsequent changes or new orders for the custody of the children and their support, maintenance, health, and dental care, and for distribution of the property and obligations for debts as is reasonable and necessary.

(4) Child support, custody, visitation, and other matters related to children born to the mother and father after entry of the decree of divorce may be added to the decree by modification.

(5) (a) In determining parent-time rights of parents and visitation rights of grandparents and other members of the immediate family, the court shall consider the best interest of the child.

(b) Upon a specific finding by the court of the need for peace officer enforcement, the court may include in an order establishing a parent-time or visitation schedule a provision, among other things, authorizing any peace officer to enforce a court-ordered parent-time or visitation schedule entered under this chapter.

(6) If a petition for modification of child custody or parent-time provisions of a court order is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees expended by the prevailing party in that action, if the court determines that the petition was without merit and not asserted or defended against in good faith.

(7) If a petition alleges noncompliance with a parent-time order by a parent, or a visitation order by a grandparent or other member of the immediate family where a visitation or parent-time right has been previously granted by the court, the court may award to the prevailing party costs, including actual attorney fees and court costs incurred by the prevailing party because of the other party's failure to provide or exercise court-ordered visitation or

94 parent-time.

95 (8) (a) The court shall consider at least the following factors in determining alimony:

96 (i) the financial condition and needs of the recipient spouse;

97 (ii) the recipient's earning capacity or ability to produce income;

98 (iii) the ability of the payor spouse to provide support;

99 (iv) the length of the marriage;

100 (v) whether the recipient spouse has custody of minor children requiring support;

101 (vi) whether the recipient spouse worked in a business owned or operated by the payor

102 spouse; and

103 (vii) whether the recipient spouse directly contributed to any increase in the payor

104 spouse's skill by paying for education received by the payor spouse or allowing the payor

105 spouse to attend school during the marriage.

106 (b) The court may consider the fault of the parties in determining alimony.

107 (c) As a general rule, the court should look to the standard of living, existing at the
108 time of separation, in determining alimony in accordance with Subsection (8)(a). However, the
109 court shall consider all relevant facts and equitable principles and may, in its discretion, base
110 alimony on the standard of living that existed at the time of trial. In marriages of short
111 duration, when no children have been conceived or born during the marriage, the court may
112 consider the standard of living that existed at the time of the marriage.

113 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
114 respective standards of living.

115 (e) When a marriage of long duration dissolves on the threshold of a major change in
116 the income of one of the spouses due to the collective efforts of both, that change shall be
117 considered in dividing the marital property and in determining the amount of alimony. If one
118 spouse's earning capacity has been greatly enhanced through the efforts of both spouses during
119 the marriage, the court may make a compensating adjustment in dividing the marital property
120 and awarding alimony.

121 (f) In determining alimony when a marriage of short duration dissolves, and no
122 children have been conceived or born during the marriage, the court may consider restoring
123 each party to the condition which existed at the time of the marriage.

124 (g) (i) The court has continuing jurisdiction to make substantive changes and new

orders regarding alimony based on a substantial material change in circumstances not foreseeable at the time of the divorce.

(ii) The court may not modify alimony or issue a new order for alimony to address needs of the recipient that did not exist at the time the decree was entered, unless the court finds extenuating circumstances that justify that action.

(iii) In determining alimony, the income of any subsequent spouse of the payor may not be considered, except as provided in this Subsection (8).

(A) The court may consider the subsequent spouse's financial ability to share living expenses.

(B) The court may consider the income of a subsequent spouse if the court finds that the payor's improper conduct justifies that consideration.

(h) Alimony may not be ordered for a duration longer than the number of years that the marriage existed unless, at any time prior to termination of alimony, the court finds extenuating circumstances that justify the payment of alimony for a longer period of time.

(9) Unless a decree of divorce specifically provides otherwise, any order of the court that a party pay alimony to a former spouse automatically terminates upon the remarriage or death of that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment of alimony shall resume if the party paying alimony is made a party to the action of annulment and his rights are determined.

(10) Any order of the court that a party pay alimony to a former spouse terminates upon establishment by the party paying alimony that the former spouse is cohabitating with another person.

Section 2. Section **30-3-5.5** is enacted to read:

30-3-5.5. Designation of Primary and Secondary Health, Dental or Hospital Insurance Coverage.

(1) For purposes of this section, "health, hospital or dental insurance plan" has the same meaning as "health care insurance" as defined in Section 31A-1-301.

(2) (a) A decree of divorce rendered in accordance with Section 30-3-5, an order for medical expenses rendered in accordance with Section 78B-12-212, and an administrative order under Section 62A-11-326 shall, in accordance with Subsection (2)(b)(ii), designate which parent's health, hospital or dental insurance plan is primary coverage and which parent's

156 health, hospital, or dental insurance plan is secondary coverage for a dependent child.

157 (b) The provisions of the court order required by Subsection (2)(a):

158 (i) shall take effect if at any time a dependent child is covered by both parents' health,
159 hospital, or dental insurance plans; and

160 (ii) shall include the following language:

161 "If, at any point in time, a dependent child is covered by the health, hospital, or dental
162 insurance plans of both parents, the health, hospital, or dental insurance plan of (Parent's
163 Name) shall be primary coverage for the dependent child and the health, hospital, or dental
164 insurance plan of (Other Parent's Name) shall be secondary coverage for the dependent child.
165 If a parent remarries and his or her dependent child is not covered by that parent's health,
166 hospital, or dental insurance plan but is covered by a step-parent's plan, the health, hospital, or
167 dental insurance plan of the step-parent shall be treated as if it is the plan of the remarried
168 parent and shall retain the same designation as the primary or secondary plan of the dependent
169 child."

170 (c) A decree of divorce or related court order may not modify the language required by
171 Subsection (2)(b)(ii).

172 (d) Notwithstanding Subsection (2)(c), a court may allocate the payment of medical
173 expenses including co-payments, deductibles, and co-insurance not covered by health insurance
174 between the parents in accordance with Subsections 30-3-5(1)(a) and 78B-12-212(6).

175 (2) In designating primary coverage pursuant to Subsection (2), a court may take into
176 account:

177 (a) the birth dates of the parents;

178 (b) a requirement in a court order, if any, for one of the parents to maintain health
179 insurance coverage for a dependent child;

180 (c) the parent with physical custody of the dependent child; or

181 (d) any other factor the court considers relevant.

182 Section 3. Section **31A-22-619** is amended to read:

183 **31A-22-619. Coordination of benefits.**

184 (1) The commissioner shall: ~~[(a) convene a group of health insurers and health care~~
185 ~~providers for the purpose of making recommendations to the Legislature regarding an efficient~~
186 ~~method of coordination of benefits to increase the timeliness and accuracy of coordination of~~

benefits;(b) report to the Legislature's Health Reform Task Force before November 15, 2009 regarding legislation to enact the recommendations developed under Subsection (1)(a); and (c)]

(a) adopt rules concerning the coordination of benefits between accident and health insurance policies[-];

(b) publish a coordination of benefits guide;

(c) post the coordination of benefits guide on the state insurance exchange; and

(d) work with the Health Data Authority; health care provider groups, and with state and national organizations that are developing uniform standards for the electronic exchange of health insurance claims to develop standardized language regarding coordination of benefits for the purpose of including the standardized language in an insurer's explanation of benefits.

(2) Rules adopted by the commissioner under Subsection (1):

(a) may not prohibit coordination of benefits with individual accident and health insurance policies; [~~and~~]

(b) shall apply equally to all accident and health insurance policies without regard to whether the policies are group or individual policies[-]; and

(c) shall include standardized language regarding the coordination of benefits process that shall be included in each insurer's accident and health insurance policy.

Section 4. Section **62A-11-326** is amended to read:

62A-11-326. Medical and dental expenses of dependent children.

In any action under this part, the office and the department in their orders:

(1) shall include a provision assigning responsibility for cash medical support; and

(2) shall include a provision requiring the purchase and maintenance of appropriate medical, hospital, and dental care insurance for those children, if:

(a) insurance coverage is or becomes available at a reasonable cost; and

(b) the insurance coverage is accessible to the children[-]; and

(3) shall include a designation of which health, dental or hospital insurance plan is primary and which is secondary in accordance with the provisions of Section 30-3-5.5 which will take effect if at any time the dependent children are covered by both parents' health, hospital or dental insurance plans.

Section 5. Section **63I-2-231** is amended to read:

63I-2-231. Repeal dates, Title 31A.

218 ~~[(1)]~~ Section 31A-23a-415 is repealed July 1, 2011.

219 ~~[(2) Section 31A-22-619 is repealed July 1, 2010.]~~

220 Section 6. Section **78B-12-212** is amended to read:

221 **78B-12-212. Medical expenses.**

222 (1) (a) The court shall order that insurance for the medical expenses of the minor
223 children be provided by a parent if it is available at a reasonable cost.

224 (b) The court shall, in accordance with Section 30-3-5, designate which health,
225 hospital, or dental insurance plan is primary and which health, hospital, or dental insurance
226 plan is secondary if at any time a dependent child is covered by both parents' health, hospital or
227 dental insurance plans.

228 (2) In determining which parent shall be ordered to maintain insurance for medical
229 expenses, the court or administrative agency may consider the:

230 (a) reasonableness of the cost;

231 (b) availability of a group insurance policy;

232 (c) coverage of the policy; and

233 (d) preference of the custodial parent.

234 (3) The order shall require each parent to share equally the out-of-pocket costs of the
235 premium actually paid by a parent for the children's portion of insurance unless the court finds
236 good cause to order otherwise.

237 (4) The parent who provides the insurance coverage may receive credit against the base
238 child support award or recover the other parent's share of the children's portion of the premium.
239 In cases in which the parent does not have insurance but another member of the parent's
240 household provides insurance coverage for the children, the parent may receive credit against
241 the base child support award or recover the other parent's share of the children's portion of the
242 premium.

243 (5) The children's portion of the premium is a per capita share of the premium actually
244 paid. The premium expense for the children shall be calculated by dividing the premium
245 amount by the number of persons covered under the policy and multiplying the result by the
246 number of children in the instant case.

247 (6) The order shall, in accordance with Subsection 30-3-5 (1)(b), include a cash
248 medical support provision that requires each parent to equally share all reasonable and

necessary uninsured and unreimbursed medical and dental expenses incurred for the dependent children, including but not limited to deductibles and copayments unless the court finds good cause to order otherwise.

(7) The parent ordered to maintain insurance shall provide verification of coverage to the other parent, or to the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., upon initial enrollment of the dependent children, and thereafter on or before January 2 of each calendar year. The parent shall notify the other parent, or the Office of Recovery Services under Title IV of the Social Security Act, 42 U.S.C. Section 601 et seq., of any change of insurance carrier, premium, or benefits within 30 calendar days of the date the parent first knew or should have known of the change.

(8) A parent who incurs medical expenses shall provide written verification of the cost and payment of medical expenses to the other parent within 30 days of payment.

(9) In addition to any other sanctions provided by the court, a parent incurring medical expenses may be denied the right to receive credit for the expenses or to recover the other parent's share of the expenses if that parent fails to comply with Subsections (7) and (8).

Section 7. Repealer.

This bill repeals:

Section 31A-22-619.5 (Effective 07/01/10), Coordination of benefits.